

Small Business Subcommittee Amendment #1

Amendment No. 1 to HB2563

**Hargrove
Signature of Sponsor**

AMEND Senate Bill No. 2664

House Bill No. 2563*

FILED
Date _____
Time _____
Clerk _____
Comm. Amdt. _____

by deleting all language following the enacting clause and by substituting instead the following:

SECTION 1. The title of this act is, and may be cited as, the "Cemetery Consumer Rights Act".

SECTION 2. Tennessee Code Annotated, Title 46, is amended by inserting Sections 3 through 10 below as a new, appropriately designated chapter thereto:

SECTION 3. As used in this chapter, "interment site" means a lot, grave, lawn crypt, mausoleum crypt, niche or any other place of interment, and shall include any right of interment in any such lot, grave, lawn crypt, mausoleum crypt or niche, as such terms are defined in §46-1-101.

SECTION 4.

(a) No cemetery company shall knowingly sell an interment site that has been purchased previously by another consumer. This subsection shall not be construed to prohibit a cemetery company from selling an interment site that has been determined to have escheated to the cemetery company pursuant to §§46-3-110 through 46-3-112. This subsection shall not be construed to prohibit a consumer who has purchased an interment site from selling or disposing of the same in the discretion of that consumer, if such disposition is otherwise in accordance with applicable law.

(b) In addition to the records required to be kept by §46-2-201, a cemetery company shall keep records of sales of all interment sites.

(c) A violation of subsection (a) is a Class C misdemeanor.

(d) A consumer has a right to bring a civil action against a cemetery company who has sold an interment site to that consumer in violation of subsection (a), whether

the consumer was the initial purchaser or a subsequent purchaser of the interment site, in order to recover any costs, fees or other expenses incurred by such consumer as a result of a violation of subsection (a), including but not limited to costs incurred in locating a suitable burial place or in relocating human remains.

SECTION 5. Any cemetery company selling an interment site within a cemetery in this state to any consumer shall execute a deed for the conveyance of the property. The deed shall be executed in such manner as is necessary for the deed to be accepted for registration by the register of deeds and shall be notarized. The deed shall be registered with the register of deeds of the county in which the cemetery is located pursuant to §66-24-101. Any cost, fee or tax for recording such deed shall be paid by the cemetery company and shall not exceed ten dollars (\$10.00). This section shall not be construed to apply to any lot sold prior to July 1, 2007.

SECTION 6. All interment sites sold to consumers by a cemetery company located in this state are presumed to be the sole and separate property of the owner named in the instrument of conveyance, regardless of whether or not the instrument of conveyance is a deed.

SECTION 7. By no later than July 1, 2007, every cemetery company in this state shall develop a current map of the cemetery detailing the location of interment sites that have been sold to consumers. Such map shall be registered with the register of deeds of the county in which the cemetery is located pursuant to §66-24-101 by no later than July 1, 2007. Any cost, fee or tax for recording such map shall be paid by the cemetery company and shall be limited to no more than ten dollars (\$10.00).

SECTION 8. Any consumer purchasing an interment site in a cemetery located in this state shall receive from the cemetery company at the time of purchase the following:

- (a) A copy of the executed purchase contract for the interment site which shall contain a detailed description of the location of the interment site purchased;
- (b) A copy of the deed required by this chapter; and

(c) A confirmation that the deed required by this chapter has been duly registered with the register of deeds.

SECTION 9.

(a) Any consumer selling an interment site within a cemetery in this state to another consumer shall execute a deed for the conveyance of the property pursuant to this section.

(b) Any conveyance of an interment site from a consumer to another consumer, including conveyance by will or the probating of an estate, shall be documented by the execution of a deed for the conveyance of the property pursuant to this section.

(c) In the event of any dispute as to the ownership of an interment site which has been resolved by court order, the determination of ownership of the interment site set forth in the court order shall be documented by execution of a deed for the property pursuant to this section.

(d) Any deed required by this section shall be executed in such manner as is necessary for the deed to be accepted for registration by the register of deeds and shall be notarized. The deed shall be registered with the register of deeds of the county in which the cemetery is located pursuant to §66-24-101. Any cost, fee or tax for recording such deed shall not exceed ten dollars (\$10.00). A copy of the executed deed shall be provided to the cemetery company that owns or operates the cemetery in which the interment site is located by no later than fourteen (14) business days following the execution of the deed.

(e) This section shall not be construed to apply to any lot sold prior to July 1, 2007.

SECTION 10. Nothing in this chapter shall apply to cemeteries exempt under the provisions of §46-1-106.

SECTION 11. Tennessee Code Annotated, Section 46-8-103(b), is amended by deleting the current language in its entirety and by substituting instead the following:

(b) Real property which has a deed that reflects the presence of human remains on the property is protected from disturbance or development as follows:

(1)

(A) A gravesite may not be disturbed in the area of ten feet (10') surrounding the perimeter of the gravesite; and

(B) A crypt may not be disturbed in the area of five feet (5') surrounding the perimeter of the crypt.

(2)

(A) If the real property surrounding or abutting such property is land to which farm animals have access, then the owner of such real property shall either:

(i) Erect a protective barrier around such gravesites or crypts; or

(ii) Authorize another person to erect a protective barrier around such gravesites or crypts if such person makes a written request of the owner of the real property to erect such a barrier. Such barrier shall be of a type approved by the owner of the real property.

(B) If the owner of such real property fails to comply with the provisions of subdivision (A), the owner shall be financially liable for any damage to such gravesites or crypts caused by such farm animals.

SECTION 12. Tennessee Code Annotated, Title 46, Chapter 8, is amended by inserting Sections 13 through 17 below as new, appropriately designated sections thereto.

SECTION 13. Owners of private property upon which a cemetery, crypt or gravesite is located have a duty to allow ingress and egress to the cemetery, crypt or gravesite by family members and descendants of the deceased persons buried there, pursuant to the requirements of this chapter.

SECTION 14.

(a) Eligible persons who want to exercise ingress and egress to a cemetery, crypt or gravesite on private property shall give reasonable notice to the owner of record, to the occupant of the property, or both.

(b) An access route to the cemetery, crypt or gravesite may be designated by the owner of the property if no access route is obviously visible by a view of the property.

(c) The owner of the property shall designate a reasonable time or times for the eligible persons to exercise their right to ingress and egress to the cemetery, crypt or gravesite.

SECTION 15. Eligible persons may exercise ingress and egress only for the purposes of:

- (1) Visiting graves;
- (2) Maintaining the grave site or cemetery;
- (3) Burying human remains in a cemetery plot by those persons granted rights of burial to such cemetery plot; and
- (4) Conducting genealogical research.

SECTION 16. All persons exercising access to a cemetery or to graves pursuant to this chapter shall conduct themselves in a manner that does not damage private property, the cemetery, crypts or gravesites. All such persons are liable to the owner of the property for any damage occurring from their ingress to or egress from the cemetery, crypts or gravesites.

SECTION 17. Any eligible person denied reasonable access to a cemetery, crypt or gravesite located on private property, including the denial to use a vehicle on such property,

may institute a proceeding in the chancery court of the county in which the cemetery, crypt or gravesite is located to enjoin the owner of the private property, or the occupant of such property, from denying the claimant reasonable ingress and egress to the cemetery, crypt or gravesite for the authorized purposes set forth in this chapter. In granting injunctive relief, the chancery court may set the frequency of access, route of access, and hours and duration of access.

SECTION 18. Tennessee Code Annotated, Section 66-24-101(a), is amended by inserting the following as a new, appropriately designated subdivision thereto:

(28) All cemetery interment site deeds and cemetery maps required to be registered pursuant to title 46.

SECTION 19. Tennessee Code Annotated, Section 67-4-409(a)(3), is amended by deleting the word "or" at the end of subdivision (E); by deleting the period at the end of subdivision (F) and substituting instead a semi-colon and the word "or"; and by adding the following language as a new subdivision to be designated as follows:

(G) A deed evidencing ownership or conveyance of an interment site recorded pursuant to title 46.

SECTION 20. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 21. This act shall take effect July 1, 2006, the public welfare requiring it.